

The New York Times

Letter From Bill Keller on The Times's Banking Records Report

The following is a letter Bill Keller, the executive editor of The Times, has sent to readers who have written to him about The Times's [publication of information](#) about the government's examination of international banking records:

I don't always have time to answer my mail as fully as etiquette demands, but our story about the government's surveillance of international banking records has generated some questions and concerns that I take very seriously. As the editor responsible for the difficult decision to publish that story, I'd like to offer a personal response.

Some of the incoming mail quotes the angry words of conservative bloggers and TV or radio pundits who say that drawing attention to the government's anti-terror measures is unpatriotic and dangerous. (I could ask, if that's the case, why they are drawing so much attention to the story themselves by yelling about it on the airwaves and the Internet.) Some comes from readers who have considered the story in question and wonder whether publishing such material is wise. And some comes from readers who are grateful for the information and think it is valuable to have a public debate about the lengths to which our government has gone in combatting the threat of terror.

It's an unusual and powerful thing, this freedom that our founders gave to the press. Who are the editors of The New York Times (or the Wall Street Journal, Los Angeles Times, Washington Post and other publications that also ran the banking story) to disregard the wishes of the President and his appointees? And yet the people who invented this country saw an aggressive, independent press as a protective measure against the abuse of power in a democracy, and an essential ingredient for self-government. They rejected the idea that it is wise, or patriotic, to always take the President at his word, or to surrender to the government important decisions about what to publish.

The power that has been given us is not something to be taken lightly. The responsibility of it weighs most heavily on us when an issue involves national security, and especially national security in times of war. I've only participated in a few such cases, but they are among the most agonizing decisions I've faced as an editor.

The press and the government generally start out from opposite corners in such cases. The government would like us to publish only the official line, and some of our elected leaders tend to view anything else as harmful to the national interest. For example, some members of the Administration have argued over the past three years that when our reporters describe sectarian violence and insurgency in Iraq, we risk demoralizing the nation and giving comfort to the enemy. Editors start from the premise that citizens can be entrusted with unpleasant and complicated news, and that the more they know the better they will be able to make their views known to their elected officials. Our default position — our job — is to publish information if we are convinced it is fair and accurate, and our biggest failures have generally been when we failed to dig deep enough or to report fully enough. After The Times played down its advance knowledge of the Bay of Pigs invasion, President Kennedy reportedly said he wished we had published what we knew and perhaps prevented a fiasco. Some of the reporting in The Times and elsewhere prior to the war in Iraq was criticized for not being skeptical enough of the Administration's claims about the Iraqi threat. The question we start with as journalists is not "why publish?" but "why would we withhold information of significance?" We have sometimes done so, holding stories or editing out details that could serve those hostile to the U.S. But we need a compelling reason to do so.

Forgive me, I know this is pretty elementary stuff — but it's the kind of elementary context that sometimes gets lost in the heat of strong disagreements.

Since September 11, 2001, our government has launched broad and secret anti-terror monitoring programs without seeking authorizing legislation and without fully briefing the Congress. Most Americans seem to support extraordinary measures in defense against this extraordinary threat, but some officials who have been involved in these programs have spoken to the Times about their discomfort over the legality of the government's actions and over the adequacy of oversight. We believe The Times and others in the press have served the public interest by accurately reporting on these programs so that the public can have an informed view of them.

Our decision to publish the story of the Administration's penetration of the international banking system followed weeks of discussion between Administration officials and The Times, not only the reporters who wrote the story but senior editors, including me. We listened patiently and attentively. We discussed the matter extensively within the paper. We spoke to others — national security experts not serving in the Administration — for

their counsel. It's worth mentioning that the reporters and editors responsible for this story live in two places — New York and the Washington area — that are tragically established targets for terrorist violence. The question of preventing terror is not abstract to us.

The Administration case for holding the story had two parts, roughly speaking: first that the program is good — that it is legal, that there are safeguards against abuse of privacy, and that it has been valuable in deterring and prosecuting terrorists. And, second, that exposing this program would put its usefulness at risk.

It's not our job to pass judgment on whether this program is legal or effective, but the story cites strong arguments from proponents that this is the case. While some experts familiar with the program have doubts about its legality, which has never been tested in the courts, and while some bank officials worry that a temporary program has taken on an air of permanence, we cited considerable evidence that the program helps catch and prosecute financiers of terror, and we have not identified any serious abuses of privacy so far. A reasonable person, informed about this program, might well decide to applaud it. That said, we hesitate to preempt the role of legislators and courts, and ultimately the electorate, which cannot consider a program if they don't know about it.

We weighed most heavily the Administration's concern that describing this program would endanger it. The central argument we heard from officials at senior levels was that international bankers would stop cooperating, would resist, if this program saw the light of day. We don't know what the banking consortium will do, but we found this argument puzzling. First, the bankers provide this information under the authority of a subpoena, which imposes a legal obligation. Second, if, as the Administration says, the program is legal, highly effective, and well protected against invasion of privacy, the bankers should have little trouble defending it. The Bush Administration and America itself may be unpopular in Europe these days, but policing the byways of international terror seems to have pretty strong support everywhere. And while it is too early to tell, the initial signs are that our article is not generating a banker backlash against the program.

By the way, we heard similar arguments against publishing last year's reporting on the NSA eavesdropping program. We were told then that our article would mean the death of that program. We were told that telecommunications companies would — if the public knew what they were doing — withdraw their cooperation. To the best of my knowledge,

that has not happened. While our coverage has led to much public debate and new congressional oversight, to the best of our knowledge the eavesdropping program continues to operate much as it did before. Members of Congress have proposed to amend the law to put the eavesdropping program on a firm legal footing. And the man who presided over it and defended it was handily confirmed for promotion as the head of the CIA.

A secondary argument against publishing the banking story was that publication would lead terrorists to change tactics. But that argument was made in a half-hearted way. It has been widely reported — indeed, trumpeted by the Treasury Department — that the U.S. makes every effort to track international financing of terror. Terror financiers know this, which is why they have already moved as much as they can to cruder methods. But they also continue to use the international banking system, because it is immeasurably more efficient than toting suitcases of cash.

I can appreciate that other conscientious people could have gone through the process I've outlined above and come to a different conclusion. But nobody should think that we made this decision casually, with any animus toward the current Administration, or without fully weighing the issues.

Thanks for writing.

The Los Angeles Times

http://www.latimes.com/news/opinion/commentary/la-oe-baquet27jun27.0.7950949_story?coll=la-home-commentary

Why we ran the bank story

The Times editor on the paper's decision to expose U.S. money monitoring.

By Dean Baquet

DEAN BAQUET is the editor of the Los Angeles Times.

June 27, 2006

MANY READERS have been sharply critical of our decision to publish an article Friday on the U.S. Treasury Department's program to secretly monitor worldwide money transfers in an effort to track terrorist financing.

They have sent me sincere and powerful expressions of their disappointment in our newspaper, and they deserve an equally thoughtful and honest response.

The decision to publish this article was not one we took lightly. We considered very seriously the government's assertion that these disclosures could cause difficulties for counterterrorism programs. And we weighed that assertion against the fact that there is an intense and ongoing public debate about whether surveillance programs like these pose a serious threat to civil liberties.

We sometimes withhold information when we believe that reporting it would threaten a life. In this case, we believed, based on our talks with many people in the government and on our own reporting, that the information on the Treasury Department's program did not pose that threat. Nor did the government give us any strong evidence that the information would thwart true terrorism inquiries. In fact, a close read of the article shows that some in the government believe that the program is ineffective in fighting terrorism.

In the end, we felt that the legitimate public interest in this program outweighed the potential cost to counterterrorism efforts.

Some readers have seen our decision to publish this story as an attack on the Bush administration and an attempt to undermine the war on terror.

We are not out to get the president. This newspaper has done much hard-hitting reporting on terrorism, from around the world, often at substantial risk to our reporters. We have exposed terrorist cells and led the way in exposing the work of terrorists. We devoted a reporter to covering Al Qaeda's role in world terrorism in the months before 9/11. I know, because I made the assignment.

But we also have an obligation to cover the government, with its tremendous power, and to offer information about its activities so citizens can make their own decisions. That's the role of the press in our democracy.

The founders of the nation actually gave us that role, and instructed us to follow it, no matter the cost or how much we are criticized. Thomas Jefferson said, "Whenever the people are well-informed, they can be trusted with their own government." That's the edict we followed.

This was a tough call for me, as I'm sure it was for the editors of other papers that chose to publish articles on the subject. But history tells us over and over that the nation's founders were right in pushing the press into this role. President Kennedy persuaded the press not to report the Bay of Pigs planning. He later said he regretted this, that he might have called it off had someone exposed it.

History has taught us that the government is not always being honest when it cites secrecy as a reason not to publish. No one believes, in retrospect, that there was any true reason to withhold the Pentagon Papers, although the government fought vigorously to keep them from being published by the New York Times and the Washington Post. As

Justice Hugo Black put it in that case: "The guarding of military and diplomatic secrets at the expense of informed representative government provides no real security for our Republic."

I don't expect all of our readers to agree with my call. But understand that it was one taken with serious reflection and supported by much history.

The New York Times

July 1, 2006

http://www.nytimes.com/2006/07/01/opinion/01keller.html?_r=1&oref=slogin

When Do We Publish a Secret?

By DEAN BAQUET, editor, The Los Angeles Times, and BILL KELLER, executive editor, The New York Times

SINCE Sept. 11, 2001, newspaper editors have faced excruciating choices in covering the government's efforts to protect the country from terrorist agents. Each of us has, on a number of occasions, withheld information because we were convinced that publishing it could put lives at risk. On other occasions, each of us has decided to publish classified information over strong objections from our government.

Last week our newspapers disclosed a secret Bush administration program to monitor international banking transactions. We did so after appeals from senior administration officials to hold the story. Our reports — like earlier press disclosures of secret measures to combat terrorism — revived an emotional national debate, featuring angry calls of "treason" and proposals that journalists be jailed along with much genuine concern and confusion about the role of the press in times like these.

We are rivals. Our newspapers compete on a hundred fronts every day. We apply the principles of journalism individually as editors of independent newspapers. We agree, however, on some basics about the immense responsibility the press has been given by the inventors of the country.

Make no mistake, journalists have a large and personal stake in the country's security. We live and work in cities that have been tragically marked as terrorist

targets. Reporters and photographers from both our papers braved the collapsing towers to convey the horror to the world.

We have correspondents today alongside troops on the front lines in Iraq and Afghanistan. Others risk their lives in a quest to understand the terrorist threat; Daniel Pearl of The Wall Street Journal was murdered on such a mission. We, and the people who work for us, are not neutral in the struggle against terrorism.

But the virulent hatred espoused by terrorists, judging by their literature, is directed not just against our people and our buildings. It is also aimed at our values, at our freedoms and at our faith in the self-government of an informed electorate. If the freedom of the press makes some Americans uneasy, it is anathema to the ideologists of terror.

Thirty-five years ago yesterday, in the Supreme Court ruling that stopped the government from suppressing the secret Vietnam War history called the Pentagon Papers, Justice Hugo Black wrote: "The government's power to censor the press was abolished so that the press would remain forever free to censure the government. The press was protected so that it could bare the secrets of the government and inform the people."

As that sliver of judicial history reminds us, the conflict between the government's passion for secrecy and the press's drive to reveal is not of recent origin. This did not begin with the Bush administration, although the polarization of the electorate and the daunting challenge of terrorism have made the tension between press and government as clamorous as at any time since Justice Black wrote.

Our job, especially in times like these, is to bring our readers information that will enable them to judge how well their elected leaders are fighting on their behalf, and at what price.

In recent years our papers have brought you a great deal of information the White House never intended for you to know — classified secrets about the questionable intelligence that led the country to war in Iraq, about the abuse of prisoners in Iraq and Afghanistan, about the transfer of suspects to countries that are not squeamish about using torture, about eavesdropping without warrants.

As Robert G. Kaiser, associate editor of The Washington Post, asked recently in the pages of that newspaper: "You may have been shocked by these revelations, or not at all disturbed by them, but would you have preferred not to know them at all? If a war is being waged in America's name, shouldn't Americans understand how it is being waged?"

Government officials, understandably, want it both ways. They want us to protect their secrets, and they want us to trumpet their successes. A few days ago, Treasury Secretary John Snow said he was scandalized by our decision to report on the bank-monitoring program. But in September 2003 the same Secretary Snow invited a group of reporters from our papers, The Wall Street Journal and others to travel with him and his aides on a military aircraft for a six-day tour to show off the department's efforts to track terrorist financing. The secretary's team discussed many sensitive details of their monitoring efforts, hoping they would appear in print and demonstrate the administration's relentlessness against the terrorist threat.

How do we, as editors, reconcile the obligation to inform with the instinct to protect?

Sometimes the judgments are easy. Our reporters in Iraq and Afghanistan, for example, take great care not to divulge operational intelligence in their news reports, knowing that in this wired age it could be seen and used by insurgents.

Often the judgments are painfully hard. In those cases, we cool our competitive jets and begin an intensive deliberative process.

The process begins with reporting. Sensitive stories do not fall into our hands. They may begin with a tip from a source who has a grievance or a guilty conscience, but those tips are just the beginning of long, painstaking work. Reporters operate without security clearances, without subpoena powers, without spy technology. They work, rather, with sources who may be scared, who may know only part of the story, who may have their own agendas that need to be discovered and taken into account. We double-check and triple-check. We seek out sources with different points of view. We challenge our sources when contradictory information emerges.

Then we listen. No article on a classified program gets published until the responsible officials have been given a fair opportunity to comment. And if they want to argue that publication represents a danger to national security, we put things on hold and give them a respectful hearing. Often, we agree to participate in off-the-record conversations with officials, so they can make their case without fear of spilling more secrets onto our front pages.

Finally, we weigh the merits of publishing against the risks of publishing. There is no magic formula, no neat metric for either the public's interest or the dangers of publishing sensitive information. We make our best judgment.

When we come down in favor of publishing, of course, everyone hears about it. Few people are aware when we decide to hold an article. But each of us, in the past few years, has had the experience of withholding or delaying articles when the administration convinced us that the risk of publication outweighed the benefits. Probably the most discussed instance was The New York Times's decision to hold its article on telephone eavesdropping for more than a year, until editors felt that further reporting had whittled away the administration's case for secrecy.

But there are other examples. The New York Times has held articles that, if published, might have jeopardized efforts to protect vulnerable stockpiles of nuclear material, and articles about highly sensitive counterterrorism initiatives that are still in operation. In April, The Los Angeles Times withheld information about American espionage and surveillance activities in Afghanistan discovered on computer drives purchased by reporters in an Afghan bazaar.

It is not always a matter of publishing an article or killing it. Sometimes we deal with the security concerns by editing out gratuitous detail that lends little to public understanding but might be useful to the targets of surveillance. The Washington Post, at the administration's request, agreed not to name the specific countries that had secret Central Intelligence Agency prisons, deeming that information not essential for American readers. The New York Times, in its article on National Security Agency eavesdropping, left out some technical details.

Even the banking articles, which the president and vice president have condemned, did not dwell on the operational or technical aspects of the program, but on its sweep, the questions about its legal basis and the issues of oversight.

We understand that honorable people may disagree with any of these choices — to publish or not to publish. But making those decisions is the responsibility that falls to editors, a corollary to the great gift of our independence. It is not a responsibility we take lightly. And it is not one we can surrender to the government.

— DEAN BAQUET, editor, *The Los Angeles Times*, and BILL KELLER, executive editor, *The New York Times*

The Washington Post June 29

<http://www.washingtonpost.com/wp-dyn/content/article/2006/06/28/AR2006062801954.html>

An Alert Press

Oversight of the government's national security policies is needed now more than ever.

THE DECISION on whether to publish information that government officials assert would damage national security is one of the gravest choices a newspaper can face. There may be times when editors get it wrong, either printing material that proves harmful or withholding information that should have come to light. But these are risks that the Constitution contemplated and that the Framers were persuaded were worth tolerating to ensure a free and vigorous press.

Justice Potter Stewart stated this trade-off well in a concurring opinion in the Pentagon Papers case 35 years ago. "In the absence of the governmental checks and balances present in other areas of our national life, the only effective restraint upon executive policy and power in the areas of national defense and international affairs may lie in an enlightened citizenry -- in an informed and critical public opinion which alone can here protect the values of democratic government," he wrote. "For this reason, it is perhaps here that a press that is alert, aware, and free most vitally serves the basic purpose of the First Amendment. For, without an informed and free press, there cannot be an enlightened people."

The wisdom and perspective of Justice Stewart have been conspicuously lacking in the recent uproar over reports about secret government programs. The latest and most vituperative yet involves the decision by the *New York Times* and other newspapers to publish stories detailing the administration's examination of private banking records. We recognize that this was a controversial choice. But that does not excuse the politicians

who have responded with press-bashing that scores political points at the expense of constitutional values.

Rep. Peter T. King (R-N.Y.) offered a prime example of this on Fox News on Sunday when he called for criminal prosecution of reporters, editors and the publisher at the New York Times. "The time has come for the American people to realize and the New York Times to realize we're at war and they can't be just on their own deciding what to declassify, what to release," he said.

Mr. King isn't alone in misunderstanding the critical role of an independent and aggressive press in a free society. Sen. John Ensign (R-Nev.) said the paper not only should have withheld the information but should have "worked in cooperation with those authorities in our government to make sure that those who leaked were prosecuted." Speaker J. Dennis Hastert (R-Ill.), whose chamber is to take up a resolution condemning the story, said, "This is not news; this is something that has been classified, something that is top secret."

The reactions of President Bush and, even more, Vice President Cheney have been only slightly less chilling. Mr. Cheney assailed news organizations who "take it upon themselves to disclose vital national security programs, thereby making it more difficult for us to prevent future attacks against the American people."

All administrations jealously guard secrets, often for important reasons. But this administration, more than any since the one that prosecuted the Pentagon Papers case, has resisted disclosure and effective oversight, whether by Congress or the press. This across-the-board aversion to scrutiny makes it all the more difficult for responsible media organizations to separate the legitimate claims of national security from the overblown.

Those who complain about disclosures assert that the war on terrorism has changed the calculus of risk. They would prefer a media meekly obeying official demands for secrecy. But in the end, as Justice Stewart understood, the nation stands to benefit far more than it could lose from a press that is "alert, aware and free."

The New York Times June 28
<http://www.nytimes.com/2006/06/28/opinion/28Wed1.html>

Patriotism and the Press

Over the last year, The New York Times has twice published reports about secret antiterrorism programs being run by the Bush administration. Both times, critics have claimed that the paper was being unpatriotic or even aiding the terrorists. Some have even suggested that it should be indicted under the Espionage Act. There have been a handful of times in American history when the government has indeed tried to prosecute journalists for publishing things it preferred to keep quiet. None of them turned out well

— from the Sedition Act of 1798 to the time when the government tried to enjoin The Times and The Washington Post from publishing the Pentagon Papers.

As most of our readers know, there is a large wall between the news and opinion operations of this paper, and we were not part of the news side's debates about whether to publish the latest story under contention — a report about how the government tracks international financial transfers through a banking consortium known as Swift in an effort to pinpoint terrorists. Bill Keller, the executive editor, spoke for the newsroom very clearly. Our own judgments about the uproar that has ensued would be no different if the other papers that published the story, including The Los Angeles Times and The Wall Street Journal, had acted alone.

The Swift story bears no resemblance to security breaches, like disclosure of troop locations, that would clearly compromise the immediate safety of specific individuals. Terrorist groups would have had to be fairly credulous not to suspect that they would be subject to scrutiny if they moved money around through international wire transfers. In fact, a United Nations group set up to monitor Al Qaeda and the Taliban after Sept. 11 recommended in 2002 that other countries should follow the United States' lead in monitoring suspicious transactions handled by Swift. The report is public and available on the United Nations Web site.

But any argument by the government that a story is too dangerous to publish has to be taken seriously. There have been times in this paper's history when editors have decided not to print something they knew. In some cases, like the Kennedy administration's plans for the disastrous Bay of Pigs invasion, it seems in hindsight that the editors were over-cautious. (Certainly President Kennedy thought so.) Most recently, The Times held its reporting about the government's secret antiterror wiretapping program for more than a year while it weighed administration objections.

Our news colleagues work under the assumption that they should let the people know anything important that the reporters learn, unless there is some grave and overriding reason for withholding the information. They try hard not to base those decisions on political calculations, like whether a story would help or hurt the administration. It is certainly unlikely that anyone who wanted to hurt the Bush administration politically would try to do so by writing about the government's extensive efforts to make it difficult for terrorists to wire large sums of money.

From our side of the news-opinion wall, the Swift story looks like part of an alarming pattern. Ever since Sept. 11, the Bush administration has taken the necessity of heightened vigilance against terrorism and turned it into a rationale for an extraordinarily powerful executive branch, exempt from the normal checks and balances of our system of government. It has created powerful new tools of surveillance and refused, almost as a matter of principle, to use normal procedures that would acknowledge that either Congress or the courts have an oversight role.

The Swift program, like the wiretapping program, has been under way for years with no restrictions except those that the executive branch chooses to impose on itself — or, in the case of Swift, that the banks themselves are able to demand. This seems to us very much the sort of thing the other branches of government, and the public, should be nervously aware of. We would have been very happy if Congressman Peter King, the Long Island Republican who has been so vocal in citing the Espionage Act, had been as aggressive in encouraging his colleagues to do the oversight job they were elected to do.

The United States will soon be marking the fifth anniversary of the war on terror. The country is in this for the long haul, and the fight has to be coupled with a commitment to individual liberties that define America's side in the battle. A half-century ago, the country endured a long period of amorphous, global vigilance against an enemy who was suspected of boring from within, and history suggests that under those conditions, it is easy to err on the side of security and secrecy. The free press has a central place in the Constitution because it can provide information the public needs to make things right again. Even if it runs the risk of being labeled unpatriotic in the process.

The Wall Street Journal

<http://www.opinionjournal.com/editorial/feature.html?id=110008585>

Fit and Unfit to Print

30 June 2006

The Wall Street Journal

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"Not everything is fit to print. There is to be regard for at least probable factual accuracy, for danger to innocent lives, for human decencies, and even, if cautiously, for nonpartisan considerations of the national interest."

So wrote the great legal scholar, Alexander Bickel, about the duties of the press in his 1975 collection of essays "The Morality of Consent." We like to re-read Bickel to get our Constitutional bearings, and he's been especially useful since the New York Times decided last week to expose a major weapon in the U.S. arsenal against terror financing.

President Bush, among others, has since assailed the press for revealing the program, and the Times has responded by wrapping itself in the First Amendment, the public's right to know and even The Wall Street Journal. We published a story on the same subject on the same day, and the Times has since claimed us as its ideological wingman. So allow us to explain what actually happened, putting this episode within the larger context of a newspaper's obligations during wartime.

We should make clear that the News and Editorial sections of the Journal are separate, with different editors. The Journal story on Treasury's antiterror methods was a product of the News department, and these columns had no say in the decision to publish. We have reported the story ourselves, however, and the facts are that the Times's decision was notably different from the Journal's.

According to Tony Fratto, Treasury's Assistant Secretary for Public Affairs, he first contacted the Times some two months ago. He had heard Times reporters were asking questions about the highly classified program involving Swift, an international banking consortium that has cooperated with the U.S. to follow the money making its way to the likes of al Qaeda or Hezbollah. Mr. Fratto went on to ask the Times not to publish such a story on grounds that it would damage this useful terror-tracking method.

Sometime later, Secretary John Snow invited Times Executive Editor Bill Keller to his Treasury office to deliver the same message. Later still, Mr. Fratto says, Tom Kean and Lee Hamilton, the leaders of the 9/11 Commission, made the same request of Mr. Keller. Democratic Congressman John Murtha and Director of National Intelligence John Negroponte also urged the newspaper not to publish the story.

The Times decided to publish anyway, letting Mr. Fratto know about its decision a week ago Wednesday. The Times agreed to delay publishing by a day to give Mr. Fratto a chance to bring the appropriate Treasury official home from overseas. Based on his own discussions with Times reporters and editors, Mr. Fratto says he believed "they had about 80% of the story, but they had about 30% of it wrong." So the Administration decided that, in the interest of telling a more complete and accurate story, they would declassify a series of talking points about the program. They discussed those with the Times the next day, June 22.

Around the same time, Treasury contacted Journal reporter Glenn Simpson to offer him the same declassified information. Mr. Simpson has been working the terror finance beat for some time, including asking questions about the operations of Swift, and it is a common practice in Washington for government officials to disclose a story that is going to become public anyway to more than one reporter. Our guess is that Treasury also felt Mr. Simpson would write a straighter story than the Times, which was pushing a violation-of-privacy angle; on our reading of the two June 23 stories, he did.

We recount all this because more than a few commentators have tried to link the Journal and Times at the hip. On the left, the motive is to help shield the Times from political criticism. On the right, the goal is to tar everyone in the "mainstream media." But anyone who understands how publishing decisions are made knows that different newspapers make up their minds differently.

Some argue that the Journal should have still declined to run the antiterror story. However, at no point did Treasury officials tell us not to publish the information. And while Journal editors knew the Times was about to publish the story, Treasury officials did not tell our editors they had urged the Times not to publish. What Journal editors did know is that they had senior government

officials providing news they didn't mind seeing in print. If this was a "leak," it was entirely authorized.

Would the Journal have published the story had we discovered it as the Times did, and had the Administration asked us not to? Speaking for the editorial columns, our answer is probably not. Mr. Keller's argument that the terrorists surely knew about the Swift monitoring is his own leap of faith. The terror financiers might have known the U.S. could track money from the U.S., but they might not have known the U.S. could follow the money from, say, Saudi Arabia. The first thing an al Qaeda financier would have done when the story broke is check if his bank was part of Swift.

Just as dubious is the defense in a Times editorial this week that "The Swift story bears no resemblance to security breaches, like disclosure of troop locations, that would clearly compromise the immediate safety of specific individuals." In this asymmetric war against terrorists, intelligence and financial tracking are the equivalent of troop movements. They are America's main weapons.

The Times itself said as much in a typically hectoring September 24, 2001, editorial "Finances of Terror": "Much more is needed, including stricter regulations, the recruitment of specialized investigators and greater cooperation with foreign banking authorities." Isn't the latter precisely what the Swift operation is?

Whether the Journal News department would agree with us in this or other cases, we can't say. We do know, however, that Journal editors have withheld stories at the government's request in the past, notably during the Gulf War when they learned that a European company that had sold defense equipment to Iraq was secretly helping the Pentagon. Readers have to decide for themselves, based on our day-to-day work, whether they think Journal editors are making the correct publishing judgments.

Which brings us back to the New York Times. We suspect that the Times has tried to use the Journal as its political heatshield precisely because it knows our editors have more credibility on these matters.

As Alexander Bickel wrote, the relationship between government and the press in the free society is an inevitable and essential contest. The government needs a certain amount of secrecy to function, especially on national security, and the press in its watchdog role tries to discover what it can. The government can't expect total secrecy, Bickel writes, "but the game similarly calls on the press to consider the responsibilities that its position implies. Not everything is fit to print." The obligation of the press is to take the government seriously when it makes a request not to publish. Is the motive mainly political? How important are the national security concerns? And how do those concerns balance against the public's right to know?

The problem with the Times is that millions of Americans no longer believe that its editors would make those calculations in anything close to good faith. We certainly don't. On issue after issue, it has become clear that the Times believes the U.S. is not really at war, and in any case the Bush Administration lacks the legitimacy to wage it.

So, for example, it promulgates a double standard on "leaks," deploring them in the case of Valerie Plame and demanding a special counsel when the leaker was presumably someone in the White House and the journalist a conservative columnist. But then it hails as heroic and public-spirited the leak to the Times itself that revealed the National Security Agency's al Qaeda wiretaps.

Mr. Keller's open letter explaining his decision to expose the Treasury program all but admits that he did so because he doesn't agree with, or believe, the Bush Administration. "Since September 11, 2001, our government has launched broad and secret anti-terror monitoring programs without seeking authorizing legislation and without fully briefing the Congress," he writes, and "some

officials who have been involved in these programs have spoken to the Times about their discomfort over the legality of the government's actions and over the adequacy of oversight." Since the Treasury story broke, as it happens, no one but Congressman Ed Markey and a few cranks have even objected to the program, much less claimed illegality.

Perhaps Mr. Keller has been listening to his boss, Times Publisher Arthur Sulzberger Jr., who in a recent commencement address apologized to the graduates because his generation "had seen the horrors and futility of war and smelled the stench of corruption in government.

"Our children, we vowed, would never know that. So, well, sorry. It wasn't supposed to be this way," the publisher continued. "You weren't supposed to be graduating into an America fighting a misbegotten war in a foreign land. You weren't supposed to be graduating into a world where we are still fighting for fundamental human rights," and so on. Forgive us if we conclude that a newspaper led by someone who speaks this way to college seniors has as a major goal not winning the war on terror but obstructing it.

In all of this, Mr. Sulzberger and the Times are reminiscent of a publisher from an earlier era, Colonel Robert McCormick of the Chicago Tribune. In the 1930s and into World War II, the Tribune was implacable in its opposition to FDR and his conduct of the war. During the war itself, his newspaper also exposed secrets, including one story after the victory at Midway in 1942 that essentially disclosed that the U.S. had broken Japanese codes. The government considered, but decided against, prosecuting McCormick's paper under the Espionage Act of 1917.

That was a wise decision, and not only because it would have drawn more attention to the Tribune "scoop." Once a government starts indicting reporters for publishing stories, there will be no drawing any lines against such prosecutions, and we will be well down the road to an Official Secrets Act that will let government dictate coverage.

The current political clamor is nonetheless a warning to the press about the path the Times is walking. Already, its partisan demand for a special counsel in the Plame case has led to a reporter going to jail and to defeats in court over protecting sources. Now the politicians are talking about Espionage Act prosecutions. All of which is cause for the rest of us in the media to recognize, heeding Alexander Bickel, that sometimes all the news is not fit to print.

The Chicago Tribune

<http://www.chicagotribune.com/news/opinion/chi-0606270238jun27,1,5962461.story?ctrack=1&cset=true>

Treason?

Published June 27, 2006

Debates rage inside a newsroom about every sensitive story. There's nothing more sobering than when the debate goes beyond a story's accuracy and fairness, when it goes to a larger question: Will publishing this story cause more harm than good to the nation?

President Bush on Monday condemned the recent disclosure of a secret government program by several newspapers, saying that the reporting had damaged national security.

The program in question monitors the financial transactions of suspected terrorists, allowing U.S. counterterrorism analysts to obtain financial information from a vast database.

Bush said the disclosure of that program was "disgraceful." He said the revelation "does great harm to the United States" and "makes it harder to win this war on terror." The contention is that terrorists will hide their tracks if they know some of the "means and methods" the U.S. and its

allies use to track them.

Rep. Peter King (R-N.Y.) urged the Bush administration to prosecute The New York Times for the disclosure. "We're at war, and for the Times to release information about secret operations and methods is treasonous," he said.

Those are grave charges.

A lot of Americans may ask why the Times, and other papers, including the Chicago Tribune, published this information.

The government has a right, even a duty, to keep some secrets. No responsible news organization would argue otherwise or knowingly divulge secrets that endangered lives.

But the government and the press often find themselves on a collision course about which secrets are important to protect and which are important for the public to know. As Bill Keller, the executive editor of The New York Times, wrote Sunday in a letter to readers: "The question we start with as journalists is not 'why publish?' but 'why would we withhold information of significance?' We have sometimes done so, holding stories or editing out details that could serve those hostile to the U.S. But we need a compelling reason to do so."

There's a long and testy history of newspapers and government officials, even presidents, wrangling over the publication of things that journalists learned despite the government's efforts to keep them at arm's length.

In 1942, a livid President Franklin Roosevelt briefly contemplated sending Marines to occupy Tribune Tower because of a report in this newspaper that naval officials feared would tip the Japanese that the U.S. had broken their military code. An investigation later cleared the Tribune and two of its staffers of violating an espionage law. In the Watergate era, the government went to court to stop newspapers from publishing the Pentagon Papers, which were highly illuminating about the conduct of the Vietnam war. That effort to stop publication failed--and the public was well-served by the information it learned.

A key mission of the press is to inform citizens about the workings of their government. That's an especially crucial function at a time when Americans are caught up in a wartime debate about how to balance our government's duty to protect us and our desire to keep its nose out of our business. The overwhelming belief here is that the greater good is served when there's a free flow of information so that people can make their own decisions about their government.

American Society of Newspaper Editors

<http://www.asne.org/index.cfm?id=6346>

ASNE criticizes president, lawmakers for attacks on newspapers

The American Society of Newspaper editors today issued a statement deploring attempts by government leaders to demonize newspapers for fulfilling their constitutional role.

David A. Zeeck, president of ASNE and executive editor of the The News Tribune in Tacoma, Wash., said it was important to make clear that the debate over the balance between national security and openness needed to "focus on the issues raised by the reporting, not on attacks on the truth-tellers."

The ASNE statement in full:

"The administration of President George W. Bush and some members of Congress are threatening America's bedrock values of free speech and free press with their attempts to demonize newspapers for fulfilling their constitutional role in our democratic society.

"In recent weeks, fair reporting and considered decision-making by editors have surfaced important questions about practices of our government as it prosecutes the war against terrorism. These newspapers -- and news outlets of every variety that reprinted or rebroadcast their work -- have done their work professionally, accurately and with careful consideration of the balance between the needs of security and openness that exist in a free society.

"Newspaper editors don't claim to be infallible in all judgments. However, the First Amendment makes it clear no person or branch of government has the prerogative to usurp any American's right to speak or print what he or she believes is important and relevant truth. We believe honorable debate would focus on the issues raised by the reporting, not on attacks on the truth-tellers.

"Members of the American Society of Newspaper Editors abhor terrorism and share all Americans' desire to defeat it. We also believe patriotism demands the clarity of focus on the conduct of our government that is often provided only by determined professional reporting."

Editor and Publisher June 28

http://www.editorandpublisher.com/eandp/news/article_display.jsp?vnu_content_id=1002763515

'NYT' Veterans Frankel and Jones Defend Paper's Banking Story

By Joe Strupp

NEW YORK Two prominent former newsmen for The New York Times, Max Frankel and Alex Jones, came out in defense of their old employer's recent disclosure of a secret bank monitoring program, saying the continued attacks on the paper are unfair and misplaced.

Frankel, who served as executive editor from 1986 to 1994 and held other posts in Washington and Moscow, called the recent criticism an "outburst of Agnewism," while Jones, a onetime press reporter for the paper and current director of the Shorenstein Center at Harvard University, said this was "an important moment for the watchdog press in wartime."

Both men commented to E&P about last week's disclosure by the Times of a secret government program that has been monitoring bank transactions since just after 9/11. The Times, which reported the information at about the same time as the Los Angeles Times and The Wall Street Journal, has since taken the brunt of attacks, from President Bush, Vice President Cheney, and members of Congress.

Today, Congress is set to consider a resolution condemning the newspaper.

Frankel, who served as Washington bureau chief during Richard Nixon's first term,

compared the attacks to then-Vice President Spiro Agnew's anti-press rants of the early 70s. He said going after the Times is part of an overall defensive mode the Bush administration and Republicans are currently stuck in because of problems that include the Iraq War.

"It is part of the stop-the-flag-burning [approach], the whole 'schmear'," Frankel said during a phone interview this morning. "They have dug themselves a deep trench, so they are all getting together to push all of the buttons. They know how to castigate the liberals and bring out their supporters." He added that "anytime the one, two, and three ranking officials of the government all come out talking off the same piece of paper, my propaganda antennae go up."

Frankel also pointed to several recent reports indicating that the bank monitoring program had been previously disclosed and that the information the Times reported was not all that secret. "The fact that they are chasing the money is not new," Frankel said of the anti-terrorist methods being used by the federal government. "For the last couple of years, the administration has been boasting about how they have cut off the money. I find it hard to believe that this information is of much use to the terrorists."

Jones, a Pulitzer Prize winner and co-author of the 2000 Times history, "The Trust," said those attacking the paper should be looking at the administration's recent pattern of secrecy, citing as an example the domestic wiretapping story the Times broke late last year. "This administration has demonstrated a pattern of secrecy that has been extreme," he told E&P. "They were, in my opinion, entirely wrong regarding whether the press needed to know about the domestic eavesdropping without warrants."

While Jones acknowledged that the Times, in Keller's own words, made a close-call on the bank records story, he said the overriding factor needs to be erring on the side of disclosure rather than government secrecy. "I believe that the New York Times made its decision very carefully and not in a knee-jerk way," he said, citing the weeks of discussion that went on between the Times and federal officials. "The Times is a big boy and has to be responsible for its actions, but this should not distract from the larger point of the need for Americans to know more, not less."

When asked what impact the current anti-press attacks against the Times will have on the paper, or journalism in general, the men offered different views.

Frankel said there is a danger that the public can become convinced that such moves by newspapers are based on efforts to oppose national interest rather than report the truth. But he believed that this incident would not have a long-term negative impact. "The people who think the New York Times is the enemy will continue to think so and those who believe this is the function of the press, even in wartime, will laugh it off."

Jones, commenting on the attacks by public officials, said "part of it is sincere and part of it is politics." But he added that the overwhelming issue to keep in mind is that "the public is far better served by more information than by more secrecy."

Columbia Journalism Review

http://www.cjrdaily.org/politics/up_in_arms_over_a_fouryearold.php

Up In Arms Over a Four-Year-Old Story

Paul McLeary

The editors of *National Review*, after years of bashing the media while showing blind fealty to the executive branch under George W. Bush, have finally stopped biting their tongues and come out and said it: The president should exercise iron control over which reporters have access to information, including exclusion of those who displease him.

We found this passing strange, as the editors' point is not just to wax indignant about others in the media, but to actively crush the concept of a free press. In response to the story that appeared in Friday's *New York Times* (and other papers) detailing the government's secret program to track financial transactions of suspected terrorists around the world, *NR*'s editors proclaim, "The administration should withdraw the newspaper's White House press credentials because this privilege [of access to the government] has been so egregiously abused, and an aggressive investigation should be undertaken to identify and prosecute, at a minimum, the government officials who have leaked national-defense information."

That's right. A publication staffed by journalists (whether they like to consider themselves as such or not) has officially called for the government of the United States to ban a publication from covering the White House whenever it is unhappy with what is written. Tony Snow, the White House spokesman, dismissed such action earlier today, though it's worth looking at the *NR* editorial anyway, if only to counter the spin coming from some on the right.

A little further on, the editors repeat their plea, writing, "Publications such as the *Times* ... should have their access to government reduced. Their press credentials should be withdrawn. Reporting is surely a right, but press credentials are a privilege."

There's no doubt that publishing an inside account of sensitive national security issues is a complicated and morally fraught business, but no matter how eager the *NR*'s editors are to give up their constitutionally guaranteed rights, it's about time they realized that while having a free press is a messy business, it's also one that we've managed successfully for over two centuries. As Bill Keller, executive editor of the *Times*, put it in a letter to readers last Sunday, "[a] reasonable person, informed about this program, might well decide

to applaud it. That said, we hesitate to preempt the role of legislators and courts, and ultimately the electorate, which cannot consider a program if they don't know about it." (That said, Keller really should say more about the thought process that went in to publishing the story. His note is fine, but doesn't go far enough.)

As for the *NR*'s proposal, imagine if the *Times*' access to the White House were really to be cut off -- what kind of leverage would the administration then have in advocating democracy and free speech in other parts of the world? Not only would it make the United States look hypocritical, it would also take away our moral standing when criticizing other governments for suppressing dissent and free speech.

Of course, as is so often the case, *NR* was taking its cue from one or more right-wing politicians. Rep. Pete King (R-N.Y.) told Fox News' Chris Wallace this past Sunday, "I'm calling on the attorney general to begin a criminal investigation and prosecution of the *New York Times*, its reporters, the editors that worked on this, and the publisher ... I believe they violated the Espionage Act, the Comint Act."

All of which dodges the question of just how "secret" the program was. It's safe to say, as with the wiretapping program, terrorists must have assumed that the U.S. government was already looking into their movements, communications and financial transactions. As blogger Tristram Shandy [pointed out](#) on Friday, the president himself [said](#) back in October 2001 that the U.S. government is looking to "trace their assets and freeze them, cut off their cash flows, hold people accountable who fund them, who allow the funds to go through their institutions; and not only do that at home, but to convince others around the world to join us in doing so. Thus far, we've frozen \$6 million in bank accounts linked to terrorist activity. We've frozen 30 al Qaeda accounts in the United States and 20 overseas. And we're just beginning."

And then there's this interesting post on the Counterterrorism Blog (hat tip to Jay Rosen for pointing this out), where Victor Comras, a terrorism financing expert who has worked for the U.N. [writes](#), "reports on U.S. monitoring of [banking] transactions have been out there for some time. The information was fairly well known by terrorism financing experts back in 2002. The U.N. Al Qaeda and Taliban Monitoring Group, on which I served as the terrorism financing expert, learned of the practice during the course of our monitoring inquiries. The information was incorporated in our report to the U.N. Security Council in December 2002. That report is still available on the U.N. Web site."

And a part of that report stated, "The United States has begun to apply new monitoring techniques to spot and verify suspicious transactions. The Group recommends the adoption of similar mechanisms by other countries."

Given that, one wonders how much terrorist money still goes through financial institutions, anyway. Back in September 2004, Treasury Under Secretary Stuart Levey told Congress, "As the formal and informal financial sectors become increasingly inhospitable to financiers of terrorism, we have witnessed an increasing reliance by al Qaeda and terrorist groups on cash couriers. The movement of money via cash couriers is now one of the principle methods that terrorists use to move funds."

We're not holding out much hope that this back story will ever bubble its way up to the cable talk shows or onto the pages of *National Review*, given that the lines of the debate have seemingly already been set: free inquiry on the part of a vigorous press vs. the view that the program screening bank transactions was the only thing standing between the American people and Armageddon.

Meantime, maybe the editors of the *National Review* might want consider another approach. The *Times'* Joseph Kahn reported from Beijing this morning that under a draft law being considered by the Communist Party-controlled legislature, Chinese media outlets will be fined if they report on "sudden events" without the prior blessing of government officials. Newspapers, magazines, websites and TV stations would be fined from \$6,250 to \$12,500 each time they publish something "without authorization."

The Washington Post

<http://www.washingtonpost.com/wp-dyn/content/article/2006/06/27/AR2006062701708.html>

Piling On the New York Times With a Scoop

Story on Secret Program Further Rouses Critics

By Howard Kurtz

President Bush calls the conduct of the New York Times "disgraceful." Vice President Cheney objects to the paper having won a Pulitzer Prize. A Republican congressman wants the Times prosecuted. *National Review* says its press credentials should be yanked. Radio commentator Tammy Bruce likens the paper to Julius and Ethel Rosenberg.

Even by modern standards of media-bashing, the volume of vitriol being heaped upon the editors on Manhattan's West 43rd Street is remarkable -- especially considering that the Los Angeles Times and Wall Street Journal also published accounts Friday of a secret administration program to monitor the financial transactions of terror suspects. So, in its later editions, did The Washington Post.

Times Executive Editor Bill Keller said in an interview yesterday that critics "are still angry at us" for disclosing the government's domestic eavesdropping program in December, "and I guess in their view, this adds insult to injury. . . . The Bush administration's reaction roused their base, but also roused the anti-Bush base as well," he said, noting an approximately even split in his e-mail.

Still, Keller added, "a lot of people have legitimate and genuine feelings about this, and I don't mean to belittle that."

For Republicans, the Times, with its national prominence and liberal editorial page opposed to the war in Iraq, is proving an increasingly irresistible target. They contend that exposing the classified banking program has badly undermined the administration's efforts to investigate and capture terrorists.

Sen. Pat Roberts of Kansas, chairman of the Intelligence Committee, yesterday asked John Negroponte, the national intelligence director, for a damage assessment following the Times story. Three other GOP senators joined Roberts at a news conference, with John Ensign of Nevada saying the paper "should have worked in cooperation with those authorities in our government to make sure that those who leaked were prosecuted." Arizona Rep. J.D. Hayworth circulated a letter to House Speaker Dennis Hastert calling for the paper's congressional credentials to be withdrawn. And New York Rep. Peter King continues to call for the Times -- which, he told Fox News, has an "arrogant, elitist, left-wing agenda" -- to be prosecuted for violating the 1917 Espionage Act.

Most Democratic lawmakers, meanwhile, lay low. Senate Minority Leader Harry Reid sidestepped a question yesterday about whether the Times should be prosecuted. Similarly, while the conservative blogosphere was on fire over the Times, many liberal Web sites ignored the controversy.

Keller said he spent more than an hour in late May listening to Treasury Secretary John Snow argue against publication of the story. He said that he also got a call from Negroponte, the national intelligence czar, and that three former officials also made the case to Times editors: Tom Kean and Lee Hamilton, chairmen of the 9/11 commission, and Democratic Rep. John Murtha of Pennsylvania -- an outspoken critic of the war in Iraq.

"The main argument they made to me, extensively and at length, besides that the program is valuable and legitimate, was that there are a lot of banks that are very sensitive to public opinion, and if this sees the light of day, they may stop cooperating," Keller said.

He acknowledged, as did the Times article, that there was no clear evidence that the banking program was illegal. But, he said, "there were officials who talked to us who were uncomfortable with the legality of this program, and others who were uncomfortable with the sense that what started as a temporary program had acquired a kind of permanence.

"I always start with the premise that the question is, why should we *not* publish? Publishing information is our job. What you really need is a reason to withhold information."

Such clashes between the government and the press are hardly new. President Kennedy pressed the Times successfully to withhold most details of the impending Bay of Pigs invasion. President Nixon created a "plumbers" unit to stop leaks. The Reagan administration threatened to prosecute news organizations for publishing national security information.

But rarely if ever has any White House mounted such a sustained public campaign against a single news organization. And a vast array of pundits on the right have responded by escalating their rhetoric.

Heather MacDonald, writing in the Weekly Standard, called the Times "a national security threat" that is "drunk" on its own power.

William Bennett, the former Reagan administration official and conservative radio host, said the "cumulative impact" of both Times stories, and The Post's disclosure of secret CIA prisons overseas, had brought the situation to a "critical mass." Conservatives, he said, now wonder: "Gosh, is there a secret operation we're running that *won't* be disclosed by the press?"

Bennett favors prosecuting journalists in national security cases, but believes that bringing espionage charges is not the best approach. He favors a leak investigation.

"If you go to these reporters and ask who their sources were, then they're in a Judy Miller situation," Bennett said, referring to the former Times reporter who spent 85 days behind bars for refusing to testify in the Valerie Plame leak investigation. "If they don't tell you, they go to jail. Some of us have been saying for a long time that the press is not above the law. Sooner or later you have to prove that."

Stephen Spruiell, who writes about the media for National Review Online, said there was a good reason for the comparatively muted reaction to the telephone eavesdropping story. "The divisive nature of that program tempered some of the criticism," he said. "Because the [banking] program is so defensible, you're seeing a much more vocal response."

Lucy Dalglish, executive director of the Reporters' Committee for Freedom of the Press, questioned how groundbreaking the Times banking report was. "Wouldn't you think any reasonably smart terrorist is going to know that his financial transactions are being tracked?" she asked.

For many people, Dalglish said, publishing secret information about a program that appears to be legal is "a risk they're not willing to take." But the "ugly" nature of the debate, she said, is exasperating: "I don't know how much more hate mail and vicious phone calls I can take."

Doyle McManus, Washington bureau chief of the Los Angeles Times, said his paper had the story nailed down last Wednesday but did not reach a final decision on running it "because, among other things, we hadn't sat down yet with people at Treasury to give them a full chance to tell us why we should or shouldn't do it." At the same time, he said, "we were leaning toward publishing."

At about 7 p.m. Thursday, McManus was meeting with Treasury Undersecretary Stuart Levey when another department staffer handed Levey a BlackBerry and he announced: "Well, the New York Times has posted its story" on its Web site.

While a Treasury official did tell him that it would be nice if the Los Angeles paper decided not to run the story as a "symbolic gesture," the discussion was rendered moot, McManus said. Levey then went on the record to defend the program, as he did with other newspapers, including The Post, which began playing catch-up that evening.

Dean Baquet, editor of the Los Angeles paper, noted in a letter published yesterday that "many readers have been sharply critical of our decision." He said he weighed the administration's arguments "against the fact that there is an intense and ongoing public debate about whether surveillance programs like these pose a serious threat to civil liberties."

The Wall Street Journal had been working on the banking story for a long period of time but did not reach the point of having enough information to publish until Thursday afternoon, according to a staffer who declined to be identified because the newspaper is making no public comment. The Journal does not know why Treasury officials made no appeal against publication in that paper, but editors assume that by then the officials were resigned to the fact that the details were coming out, the staffer said.

Despite the stories that appeared in competing papers, the New York Times is still bearing the brunt of the criticism at the White House, on Capitol Hill and throughout the media world.

Terence Smith, a former Timesman who until recently was PBS's media correspondent, said the paper is a "lightning rod when its critics are playing politics, and that's what's happening here. An institution like the Times is a God-given target, because it's seen by the conservative base as a liberal newspaper critical of the Bush administration."

Chicago Tribune

<http://www.chicagotribune.com/news/columnists/chi-0606280178jun28,1,2348899.column?coll=chi-news-col>

Bush beats the press to distraction

White House needs to be held accountable for what it does in the name of national security

Clarence Page

WASHINGTON -- I think President Bush does protest a bit too much about The New York Times, Los Angeles Times and The Wall Street Journal's exposure of his administration's secret money-tracking program.

The president called it "disgraceful" that the newspapers reported that Treasury Department officials acquired access to the world's largest international financial database, the Society for Worldwide Interbank Financial Telecommunication, commonly known as SWIFT, after the Sept. 11, 2001, terror attacks.

Rep. Peter King (R-N.Y.), chairman of the House Homeland Security Committee, called for criminal prosecution of The New York Times, whose actions he called "treasonous."

But, if anyone thinks Al Qaeda did not know before this story broke that the United States was combing through international banking transactions to follow terrorists' money supplies, they haven't been paying much attention to the news.

Less than a month after the Sept. 11 terrorist attacks, then-Treasury Secretary Paul O'Neill pledged to Congress that his department would do nothing less. "The Treasury Department will use every tool we have at our disposal to shut down terrorist fundraising and dismantle their organizations one dollar at a time," he said. "Their moral bankruptcy will be matched by an empty wallet."

What's really new and troubling about these stories is not the secret money probes but how much of it the Bush administration has zealously kept secret from the courts and Congress, the branches of government that have constitutional oversight over the executive branch.

Instead of seeking individual court-approved warrants or subpoenas to examine specific transactions, which is the normal way the government acquires Americans' financial records, Treasury officials have bypassed the courts to rely instead on broad administrative subpoenas, which essentially are issued by one part of the executive branch to another. Some banking and government officials expressed reservations, according to the reports, that what began as an urgent, temporary measure without specific congressional approval or formal authorization showed no signs of changing almost five years later.

Bush said Monday that members of Congress had been briefed in advance on the program, which is true. But some, including Rep. Jane Harman of California, the ranking Democrat on the House Intelligence Committee, said she and many of her colleagues on the panel were briefed by Treasury Department officials only after the administration learned it would be exposed in the press.

That's the same press that the president called "disgraceful" and that King wants to frog-march off to jail. Yet, with the courts bypassed and Congress kept in the dark, what's left to hold government accountable in circumstances like this but the press?

Since President Richard Nixon, apparently fearing the public backlash, declined to press charges against The New York Times for publishing the Pentagon Papers that revealed the bounty of lies that got us into the Vietnam quagmire, I doubt that the Bush administration will take that step. But, then, Nixon didn't have today's echo chamber of conservative commentators to help him distract the public from his cover-ups.

Bush would rather distract us from the larger story lurking here, which is the return of Total Information Awareness, a massive databank operated by a Pentagon agency under Iran-contra figure John Poindexter to monitor any check-card purchase, bank transaction, medical bill and

other electronic transaction in America. Congress took away that program's funds in September 2003 amid public alarm about the dangers it posed to privacy rights.

But its research funding continued. The National Journal reported earlier this year that Team Bush broke up the program and moved part of it to the National Security Agency. As Jonathan Turley, a constitutional law professor at George Washington University, recently opined, the "spawn" of the old program has continued under new names and new secrecy.

Governments traditionally use fear of terrorists or some other subversions of national security to excuse power grabs. It is for that reason that the Bush administration, like any other, needs to be held accountable for what it does in the name of keeping us safe. Instead of making its case to Congress, the courts and the public, Team Bush is treating accountability like one more threat to national security.

Boston Globe

http://www.boston.com/news/globe/editorial_opinion/oped/articles/2006/06/30/for_the_press_responsibility_is_balancing_act/

For the press, responsibility is balancing act

By Thomas D. Herman

PRESIDENT BUSH'S attack on The New York Times for publishing privileged information about the government's domestic spying programs revives a question answered by the US Supreme Court in a landmark case decided 35 years ago today: When is it legal for a news organization, in effect, to declassify top-secret government information concerning an ongoing war?

In June 1971, the Times, The Washington Post, and The Boston Globe published excerpts from a secret history of the Vietnam War known as the Pentagon Papers, information that at the time was classified as top secret.

The Nixon administration charged then, as the Bush administration charges today, that publication would endanger America's national security. It sought, for the first time in the nation's history, to prevent publication of a newspaper article *before* it was printed.

The case was heard by US District Judge Murray Gurfein, who was appointed by President Nixon and was in just his second day on the bench. The case was quickly appealed to the Supreme Court, which ruled that the Nixon administration could not prove that publication posed a security threat or endangered the life of a single soldier. Some of the "top-secret" documents were already public, and some were classified secret merely to hide politically embarrassing information. The newspapers, the court ruled, could publish the papers.

That result was far from certain before publication. The Times's law firm had warned its nervous young publisher, Arthur "Punch" Sulzberger, that if he went ahead with publication he would violate the Espionage Act and be sent to jail, and the firm refused to

represent the newspaper on the case. Sulzberger, the Post's Katharine Graham, and the Globe's William Davis Taylor -- these were establishment characters, not left-wing or right-wing zealots -- had been given evidence that the Kennedy and Johnson administrations had misled the public about how America became involved in Vietnam. Their editors analyzed whether this information could put the nation's security at risk, and withheld some that they felt might do so.

In the end, they believed it was more important for the public to know the evidence and make its own judgments, threat of jail be damned, than to let the president arbitrarily reserve to himself the decision of what the public should know. And the highest court in the land agreed.

The newspapers had the courage to stand up to the pressure brought by the government, and by some of their lawyers, to do the job of the press in a free society: hold the government accountable; keep the public informed on the most serious issues affecting their lives; and do it responsibly. Today, at a time of national tension perhaps as charged as during the Vietnam War, many believe we are faced with a new threat -- from government run amok, spying on millions of citizens without warrants in the name of national security -- and pressure on the public's right to know about this threat.

Journalists don't have the right to publish whatever they get their hands on, and legitimate claims of national security risk should be respected by publishers.

Before it first published its story on domestic spying last December, the Times concluded, "It would not expose any intelligence-gathering methods or capabilities that are not already on the public record." Indeed, it briefed the White House about what it planned to print -- and, unlike in 1971, the government took no legal action to stop publication.

The Bush administration's charge that the Times stories might tip off terrorists on the methods that the government is using to track them is questionable. It seems naive to suggest that Osama bin Laden's operatives didn't consider the prospect that their phone calls or e-mails might be tapped or traced. This is nothing new: Attorney General Alberto Gonzales said that, "for as long as electronic communications have existed, the United States has conducted surveillance of [enemy] communications." Massive, unwarranted spying on Americans, however, is new.

The media is far from perfect. It has much to answer for in its coverage of the war on terror, particularly the run-up to the Iraq invasion. But will muzzling it enhance our national security?

Judge Gurfein, that Nixon appointee, put it best in his Pentagon Papers opinion: "A cantankerous press, an obstinate press, a ubiquitous press, must be suffered by those in authority in order to preserve the even greater values of freedom of expression and the right of the people to know."

Thomas D. Herman, a lawyer at Smith & Duggan in Boston, is producing a documentary film about journalism and the Vietnam War. ■

The Las Vegas Review Journal

http://www.reviewjournal.com/lvrj_home/2006/Jul-17-Mon-2006/news/8503964.html

Do you want to know a secret?

But what if the government doesn't want you to know?

In this summer of 2006, two civilians who were lobbyists for a pro-Israeli organization are being prosecuted under the 89-year-old Espionage Act for receiving and retransmitting material -- supposedly involving national defense secrets -- from a Pentagon official.

Meantime, the Bush administration is sharply rebuking newspapers -- including that old standby, The New York Times -- for publishing classified information revealing to our terrorist enemies some of the domestic methods being used to track their cash and communications.

The debate over whether the press should err on the side of caution (and "patriotism") in respecting government calls for secrecy -- or whether the press sometimes has a higher duty to reveal government deception or practices that threaten our own liberties -- is important and useful.

But just as it would be hard to conduct a tug-of-war while standing in quicksand, so it's hard for this debate to reach useful conclusions unless there's some consensus on just what "secret" or "classified" really mean.

In a report released June 30, the Government Accountability Office reviewed a "nonprobability sample" of 111 classified Defense Department documents from the Office of the Secretary of Defense, in an attempt to find out "whether all of the information marked as classified met established criteria for classification."

("Nonprobability" refers to the fact the sample was incredibly small. The GAO reports that between 2000 and 2004, the Pentagon generated about 13.4 million new classified records per year -- 66.8 million in all. About 1.8 million defense employees now have some power to classify documents.)

Nonetheless, the GAO report, which was sent to Rep. Christopher Shays, R-Conn. (chairman of the subcommittee on national security of the Government Reform Committee) and disclosed on the Secrecy News Web site of Steven Aftergood, concludes, "A lack of oversight and inconsistent implementation of DOD's information security program are increasing the risk of misclassification."

Of the 111 classified documents reviewed, the GAO questioned classification determinations of 29, about one out of every four. A majority of those questioned "pertained to whether all of the information marked as classified met established criteria for classification."

Pentagon officials agreed that in five documents "the information was unclassified and in a sixth document the information should be downgraded."

In a broader administrative criticism, the GAO found that 92 of the 111 documents had some marking error, such as failure to include declassification instructions as required.

Not only that, it turns out there's no standardization between agencies as to what various markings on a document really mean. For example, some agencies use an "R" to indicate a record is to be "Released," or declassified. But others use an "R" to indicate a record is to be "Retained" -- kept classified. The letter "D" can be equally ambiguous.

"One of the agencies uses a 'D' to denote 'deny automatic declassification' and an 'R' to denote release," the report says. "While the other agency uses a 'D' to denote 'declassify' and an 'R' to denote 'retain.'"

Added to a frequently observed tendency on the part of bureaucrats everywhere to "cover their butts" by erring on the side of secrecy (after all, heads might roll if something that was supposed to be kept secret were released, while few will ever know or care if yesterday's lunch menu is inappropriately stamped "Top Secret"), the clear implication of this finding is that the value of keeping any given document secret can rarely be determined merely by what some clerk has stamped on it.

No, this doesn't mean there should be no secrecy whatsoever. Hushing up a flaw in some weapons system -- preventing a battlefield enemy from exploiting the problem till it can be "patched" -- obviously still has value, as does secrecy about troop movements.

But it does mean the government has a higher burden of proof than merely showing a "Secret" stamp when it comes time to establish that classification was justified.

Far too often, government documents are considered "secret till proven otherwise." But in a government of limited powers, delegated and jealously guarded by a "civilian" populace who remain in overall charge, the default setting must be just the opposite. What bureaucrats are doing with our money must be open and public, unless a good reason can be shown to the contrary.

The Miami Herald

<http://www.miami.com/mld/miamiherald/news/opinion/14989636.htm>

Press freedom vs. government secrecy

OUR OPINION: WE DON'T NEED AN OFFICIAL SECRETS ACT

The recent disclosure of a secret databank operation by the federal government that tracks terrorist financing has prompted calls to punish reporters and newspapers involved in the disclosure of a confidential anti-terrorist program. The ire comes principally from supporters of President Bush's administration, who believe the press has no business exposing sensitive information when terrorism still poses a threat to the country. They're wrong, but the controversy once again raises delicate questions about the role of the press in a free society, particularly in wartime.

In this instance, claims that the news media are undermining the government's duty to safeguard valuable secrets seem especially suspect. For one thing, most of the criticism has been focused on The New York Times, a favorite whipping boy of conservative critics, even though other newspapers also printed the story. Besides, it was already a matter of record that the administration was using all means at its disposal to track terrorist financing.

Trying to follow the money

No responsible news organization seeks to make the work of terrorists easier. In this particular case, the claim of such assistance is a phony argument. Surely, terrorists could not have been surprised to learn that the government was trying to follow the money by reaping information from wholesale data provided by a worldwide financial consortium known as SWIFT (the Society for Worldwide Interbank Financial Telecommunication).

- Not after President Bush himself announced only days after Sept. 11, 2001, that the government had established a "foreign asset terrorist tracking center" and asked for international cooperation to dry up terrorist funding.
- Not after Treasury Secretary Paul O'Neill disclosed a major crackdown on terrorist financial networks on Nov. 7, 2001, called "Operation Green Quest," which targeted organizations suspected of helping terrorists move their money around the world.
- And not after the 9/11 Commission weighed in with a strong recommendation calling for vigorous efforts to track terrorist financing, pointedly adding (Page 382) that international financial institutions had already provided "law enforcement and intelligence agencies with extraordinary cooperation, particularly in supplying information . . ."

More likely, recent press accounts proved an embarrassment to SWIFT and some of its member institutions, who claim to uphold traditional ideas of bank secrecy. But their embarrassment should not become a pretext to call for prosecution of American reporters under the Espionage Act of 1917, as some members of Congress have done. This would classify the publication of information as a crime, in effect creating an Official Secrets Act that could be used as a club to intimidate and/or censor the news media whenever an administration -- Republican or Democratic -- deemed it useful.

The press has a responsibility to weigh the pros and cons of publishing secret information. But it also has the duty to inform the public about the activities of its government. In upholding the right of publication in the famous Pentagon Papers case 35 years ago last month -- another wartime controversy -- Supreme Court

Justice Hugo Black wrote that "the newspapers nobly did precisely what the Founders hoped and trusted they would do." They, and we, are still doing that.

National Catholic Reporter

http://ncronline.org/NCR_Online/archives2/2006c/071406/071406t.htm

Disappearing ethics in government

We see that recently President Bush and Vice President Cheney have taken to lecturing the U.S. press on ethics.

They make a curious pair of teachers, considering the following actions undertaken by this administration:

- Engineering U.S. energy policy in secret meetings with oil companies;
- Leaking the name of a CIA agent;
- Advocating the use of torture;
- Leading the country into the disastrous war in Iraq on false pretenses;
- Insisting long after all evidence and logic proved otherwise that Iraq possessed weapons of mass destruction;
- Insisting still that the war in Iraq is part of the international war on terror, even though there were no international terrorists in Iraq at the time the United States invaded;
- Remaining absolutely mum on the cost overruns and waste racked up by Haliburton, the company the vice president formerly headed that received billions in no-bid contracts for work in Iraq;
- Jailing people secretly without access to legal representation or trial; holding suspects indefinitely without charge; and sending suspects off on "rendition" flights to other countries, again without notifying anyone, where they were likely tortured;
- Supporting as within the bounds of presidential power the secret mining of the phone records of U.S. citizens without warrant and without accountability to any court;
- And essentially nullifying the intent of Congress with presidential "signing statements" that claim a presidential right to ignore a new law if the president deems it necessary for security reasons.

The administration most recently was upset with *The New York Times*, *The Wall Street Journal*, the *Los Angeles Times* and others for revealing a secret program that searched the bank records of Americans through a huge international database. The program, which is undertaken without oversight, is deemed essential by the administration to the fight against global terrorism.

"What I find most disturbing about these stories," said Cheney during a speech for a Republican Congressional candidate in Chicago, "is the fact that some of the news media

take it upon themselves to disclose vital national security programs, thereby making it more difficult for us to prevent future attacks against the American people.”

The vice president is given to exaggeration and to putting things in bleak, apocalyptic terms -- to up the “fear ante” -- when it suits his purposes. We doubt that some sort of oversight, assuring against abuse, would jeopardize our intelligence gathering. Just as obtaining warrants for information culled from private phone communications would hardly bring the anti-terrorism effort to a screeching halt.

Republican Sen. Arlen Specter shares a healthy skepticism of the National Security Agency’s domestic eavesdropping program and the secret financial tracking program. According to *The New York Times*, the senator “was particularly troubled that the administration had expanded its congressional briefings on the financial tracking program in recent weeks after having learned” that the paper was working on a story.

“Why does it take a newspaper investigation to get them to comply with the law?” he asked.

Good question. President Bush and Vice President Cheney have unilaterally expanded presidential power in a way that tears at the fabric of checks, balances and accountability that distinguishes the United States from a dictatorship.

We know what excesses well-meaning officials can perpetrate in the name of fighting perceived threats to national security. We saw it during the Cold War with McCarthyism and with U.S. involvement in the overthrow of governments perceived to be sympathetic to communism. Most of the time they were countries interested primarily in reclaiming control of their own resources. We know that spying on individuals and infiltration of opposition groups occurred during the civil rights and Vietnam eras.

Terrorism has become the new communism, the new enemy and the new rationale for lowering our diligence about maintaining civil liberties.

We believe, however, that far more dangerous to democracy and democratic institutions than terrorism is the administration’s view that perceived threats to American security give it justification for acting above the law. So we applaud newspaper reports on matters of grave importance to the public as well as the Supreme Court decision recently handed down on military tribunals. It essentially told the administration that it could not construct a parallel judicial system that existed beyond congressional approval and the reach of any independent oversight to deal with suspects held at Guantánamo.

Secrecy and usurpation of power are enemies of democracy and democratic institutions. They quickly undermine the ethics of good government.

Philadelphia Inquirer

http://www.philly.com/mld/inquirer/news/special_packages/sunday_review/14995591.htm

Editorial | Government and Media

Times' bashers are reckless and wrong

Sometimes lies should be called what they are.

"Since publishing a highly controversial story about a secret U.S. program that monitors financial transactions as a tool to fight terrorism, New York Times Executive Editor Bill Keller... has admitted that the liberal press is not 'neutral' in this war on terror.

"Indeed, the track record proves the New York Times and Bill Keller are not 'neutral' but grossly biased against the U.S.-led war against terrorism."

So fulminated conservative propagandist Brent Bozell of the Media Research Center last week. His statement was part of an anti-Times frenzy whipped up by Republican strategists, then echoed ad nauseam by Pavlovian talk shows and blogs.

For these folks, bashing the Times (and journalists generally) is a hobby.

This time, though, the rhetoric has ratcheted up beyond reason: accusing Keller of a heinous crime, treason. One talk-show host talked of sending the editor to the gas chamber.

What's amazing about Bozell's statement is that he sent it to hundreds of journalists' in-boxes, even though it is so blatantly false.

Here's what Keller and Los Angeles Times editor Dean Baquet actually wrote jointly in their papers July 1:

"Make no mistake, journalists have a large and personal stake in the country's security. We live and work in cities that have been tragically marked as terrorist targets. Reporters and photographers from both our papers braved the collapsing towers to convey the horror to the world.

"We have correspondents today alongside troops on the front lines in Iraq... . We, and the people who work for us, are not neutral in the struggle against terrorism."

The meaning is clear: Journalists - who thrive and matter in free societies, but are prosecuted and vanish in authoritarian ones - do not want Islamofascism to triumph.

The controversy is not really about that, but this: how best to ensure that America endures as a nation upholding liberty and free speech.

Should we have a government of secrets, surveillance and fear-mongering, one that Vladimir Putin could love? Or a government that tells its citizens most of what it is up to and stands ready to be held accountable for its deeds, one James Madison would applaud?

OK. That's strong. Reasonable people who revere the Constitution can disagree about how many limits on civil liberties are justified by the terrorist threat, or where the boundaries of executive power should be set post-9/11. Someone who is worried by the warrantless National Security Agency snooping into Americans'

calls and e-mail (exposed by the Times last year) might have less problem with the feds' just-revealed mining of overseas bank data.

But how can citizens of a democracy debate such principles and nuances if they have no clue what their government is doing in their name? If it were up to President Bush and Vice President Cheney, you would know nothing about flaws in WMD intelligence, torture in American-run prisons or NSA snooping. Journalists exposed all that.

Absolutely, without a doubt, journalists should not print some things they might dig up, if doing so would clearly jeopardize lives. As Keller and Baquet wrote, newspapers sometimes do decide not to publish what they know, for that reason.

But it is in the nature of political power to overreach, then seek to hide its sins behind the shield of national security. That is a bipartisan habit, but this administration has a severe case.

Here's another key point: Despite the screeching in the partisan blogosphere, these stories endangered no lives. They did not tell al-Qaeda anything it didn't already know. Richard A. Clarke, who led counterterrorism efforts for several presidents, confirms that point.

Indeed, when it suited its mood, this administration has trumpeted its efforts to pierce terrorists' financial networks. The Times story actually reinforced a message the United States wants to send al-Qaeda: *The swift, global ease of electronic banking is closed to you now. To move money, you must use slow, awkward means.*

Given all that, why this sudden, fierce assault on journalists?

For an answer, look not to Baghdad but to Gallup.

The polls portend a rough Election Day for Republicans in November. Being held accountable by voters for incompetence, arrogance, abuse of power, and greed is a scary prospect.

The Karl Rove playbook for political jams advises: "Hype a villain to distract voters with fear."

Can't use Osama anymore, because that would remind voters he's still a free man, as the Taliban rebound.

Can't use Saddam.

Can't use that hardy standby, "tax and spend" liberals; the GOP for years now has run the deficit-ridden, spendaholic show in Washington.

Can't just blame "liberal media" bias, not when Fox News is No. 1 and Ann Coulter tops best-seller lists. So, up the ante: *"Bill Keller is a traitor."*

This is false. This is mean. This is reckless and over the line.

It should be denounced by any American who prizes the First Amendment and the ideals of civil, democratic discourse.

The Memphis Commercial Appeal

http://www.commercialappeal.com/mca/opinion_columnists/article/0,1426,MCA_539_4828391,00.html

Be careful when muzzling media

The message light on my office phone glowed red on the Fourth of July. When I picked up, a gruff voice on the line asked: "When are you guys going to rebuke The New York Times for being a traitor and helping the terrorists?"

The traitorous act by the Times involved publication of details about CIA and Treasury Department surveillance of millions of international banking transactions. The transactions being monitored are routed through the Society for Worldwide Interbank Financial Telecommunication (SWIFT) consortium. The purpose of the monitoring is to see if any information can be gleaned about the funding of terrorism.

President Bush and some members of Congress condemned publication of the story about the secret tracking of monetary transactions, saying its publication would undoubtedly harm global efforts to track terrorist financial dealings.

Adding insult to this injury, my gruff caller noted that The New York Times also had outed Secretary of Defense Donald Rumsfeld's vacation getaway in rural Maryland, thereby endangering Rumsfeld's life and privacy.

Conservative bloggers have had a field day with both these issues. Some have suggested The New York Times be prosecuted for treason and that its editors have their own home addresses, phone numbers and family details published for all to see.

The caller on my voice mail supported all of this.

He suggested that if The Commercial Appeal didn't join in the outrage we were simply supporting terrorism and persecuting Secretary Rumsfeld, too.

I called the gruff veteran back. I got his voice mail.

This is the gist of what I said in my message: No, we're not supporting terrorism here at the paper. As an institution and as Americans, we want a peaceful, safe world, and recognize that terrorists are intent on disrupting our society and making us scared.

Yes, there are legitimate issues to be considered when a newspaper decides to publish confidential or classified information that the government would like to keep secret. The media need to be focused on finding truth and on balancing the need to know with potential harm done by publishing.

And I noted that journalists don't have a standardized playbook to consult for making decisions on such issues. Whether it's a big, serious debate over something like the SWIFT records or something small like disclosing someone's vacation home, journalists need to have discussions about the implications and trade-offs.

If I'd had another few minutes on the message machine, I would have elaborated on these points.

The easiest issue to dispatch involves the so-called outing of Rumsfeld's vacation home. It turns out the secretary gave permission to The New York Times to take the pictures of his house. The Secret Service has volunteered that publishing the photos posed no threat to Rumsfeld.

Still, these facts mysteriously haven't made their way onto the most vociferous of the anti-news media Web sites.

As for what other media should do in terms of supporting or chastising The New York Times for its decision to report the SWIFT monitoring, the question really begins and ends with whether the newspaper took seriously the expectation that it weigh the options and serve the public.

In the end, public service is the trump card. Did the public need to know about this practice of government tracking of 11 million financial records a day, or was this information the public didn't need to know?

The New York Times' executive editor Bill Keller and others at the Times met with government officials to discuss the SWIFT story. They listened to the arguments about why the story shouldn't be published. They understood that the government didn't want it out.

Then, they decided that the public knowing about the secret program was more important than the government's request to hold back.

In the end, the media in this country don't work for the government.

And so the calls by congressmen for more cooperation, or conversely, more punishment of a stubborn press corps, are not only misguided but dangerous.

No one in this society should ever wish for government control or censorship of the free press.

One only has to look to the old Soviet Union or the present day Middle Eastern nations of Saudi Arabia and Iran to see the results of government-controlled media. Under that model, there is no room for dissent, no place for government accountability.

If anything, the larger issue the media face is that they are puppies when it comes to challenging assertions and plans by government.

Make no mistake in recognizing what you are seeing in the federal government leadership these days. Government is bigger than ever. It's powerful. It's secretive.

But it isn't infallible.

Wouldn't it have been valuable, in retrospect, if the media had been more attentive to the warnings about 9/11 that went unheeded in the FBI?

Wouldn't it have been valuable, looking back, if the media had been more forceful in investigating the rationale for war in Iraq, despite the claims that the war was justified on the basis of Saddam Hussein's weapons of mass destruction?

Wouldn't it have been valuable if the media had looked harder at the policy that today allows our nation to torture prisoners held on suspicion of terrorist activities?

For what happens now when American soldiers are captured and our government is on record as supporting torture?

So, don't wish too hard that The New York Times, or other media, cave in to government demands for less coverage.

A free press still represents one of crucial checks and balances that must remain vigorous in this country at a time when government secrecy and imperial power grow stronger by the day.

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Market Watch

<http://www.marketwatch.com/News/Story/Story.aspx?guid=%7B7CCF6A6B-D638-46C7-8AFA-6228E44AC8C8%7D&siteid=mktw&dist=>

Don't say the New York Times is unpatriotic

By [Jon Friedman](#)

NEW YORK With all due respect to President George Bush and Vice President Dick Cheney, I don't think the New York Times is unpatriotic. Quite the opposite, in fact.

For the second time in six months, the White House blasted the Times angrily accusing the newspaper of breaking a wartime tradition of keeping sensitive information a secret. This charge relates, most recently, to the disclosure of a secret CIA-Treasury program to monitor millions of financial records in the hope of finding terrorists.

Applying government subpoenas, the program permits U.S. government counterterrorism experts to gain access to an international clearinghouse that handles routing information for millions of financial transactions every day.

The question at the heart of the matter is forever compelling for the media: What constitutes a case of national security?

Bush lashes out

President Bush called the media's act "disgraceful."

In an editorial in Wednesday's editions, the Times said its story "bears no resemblance to security breaches, like disclosure of troop locations that would clearly compromise the immediate safety of specific individuals. Terrorist groups would have had to be fairly credulous not to suspect that they would be subject to scrutiny if they moved money around through international wire transfers."

The Los Angeles Times and the Wall Street Journal (which, like MarketWatch, is a unit of Dow Jones) also deserve much credit for reporting the story.

On Monday, Los Angeles Times Editor Dean Baquet said on the paper's Web site: "We considered very seriously the government's assertion that these disclosures could cause difficulties for counterterrorism programs." He added: "In the end, we felt that the legitimate public interest in this program outweighed the potential cost to counterterrorism efforts."

Leery

I'm always leery when right-wing or left-wing politicians lash out at the liberal or conservative media, in what could appear to be a highly opportunistic manner. Often times, it seems that they have launched full blast into campaign-spin mode as a way to appeal to a large group of voters.

Perhaps it's no coincidence that the current anti-New York Times furor has occurred with the 2006 campaigns heating up (and 2008 seemingly right around the corner). Maybe the politicians are already gearing up with a vengeance, at a time when the Republican Party is very nervous about losing its majorities in the House and the Senate.

Kentucky Sen. Jim Bunning (a Republican, for the record) said the Times committed treason and wanted Attorney General Alberto Gonzalez to empanel a grand jury to see if the Times' publisher and editors and writers who were involved in the story should be indicted, the Louisville Courier-Journal reported on Wednesday.

"Bunning's call for Justice Department action was not endorsed by other Kentucky and Indiana lawmakers who commented on the issue," the Courier-Journal pointed out.

Still, there was no mistaking the administration's anger at certain media, especially the New York Times.

The Associated Press reported: "The fact that a newspaper disclosed it makes it harder to win this war on terror," Bush said, leaning forward and jabbing his finger during a brief question-and-answer session with reporters in the Roosevelt Room."

This is the latest volley in the Bush administration's displeasure with the Times. Late last year, the Times wrote extensively about a National Security Agency program to collect phone call data on persons suspected of having ties to the terrorist organization Al-Qaida.

Cheney said this week in a speech at a fundraiser in Grand Island, Neb.: "Some in the press, in particular the New York Times, have made the job of defending against further terrorist attacks more difficult by insisting on publishing detailed information about vital national security programs."

The Vice President added: "The New York Times has now twice -- two separate occasions -- disclosed programs; both times they had been asked not to publish those stories by senior administration

officials. They went ahead anyway. The leaks to the New York Times and the publishing of those leaks is very damaging."

What a difference a crisis makes. Remember, the American news media were supported a few weeks ago when they didn't report far in advance the electrifying news that President Bush intended to visit Iraq and personally meet with representatives of the new government. Media members who accompanied the president didn't even tell their bosses where they were going because it was feared that terrorists might try to harm Bush if they knew of his plans.

Keller speaks

Bill Keller, the Times' executive editor, defended his paper's decision to print the pieces.

Keller said on his paper's Web site: "We believe The Times and others in the press have served the public interest by accurately reporting on these programs so that the public can have an informed view of them."

The New York Times, it should be noted, published an editorial on Sept. 24, 2001, in the aftermath of the terrorists' attacks on the World Trade Center and the Pentagon, saying in part:

"Organizing the hijacking of the planes that crashed into the World Trade Center and the Pentagon took significant sums of money. The cost of these plots suggests that putting Osama bin Laden and other international terrorists out of business will require more than diplomatic coalitions and military action. Washington and its allies must also disable the financial networks used by terrorists.

"The Bush administration is preparing new laws to help track terrorists through their money-laundering activity and is readying an executive order freezing the assets of known terrorists. Much more is needed, including stricter regulations, the recruitment of specialized investigators and greater cooperation with foreign banking authorities. There must also be closer coordination among America's law enforcement, national security and financial regulatory agencies."

Bush supporters, among others, might feel compelled to suggest that the Times editorial page and the news operation should have a chat about the paper's philosophy in fighting the war on terror.

For now, with the July 4th holiday approaching, we should ALL remember that the nation was founded partly on the precepts of freedom of press and speech.

What could be more patriotic than a vigorous and independent American media doing its job? The New York Times is a highly patriotic newspaper.

Media Matters

<http://mediamatters.org/items/200607010002>

Other Comment

On June 30, Media Matters provided these summaries of comments that had appeared in other U.S. newspapers.

- The first widely distributed newspaper to voice its support for the program's disclosure was *The Plain Dealer* of Cleveland. In a June 25 [editorial](#), *The Plain Dealer* applauded news organizations' decision to publish the story, asserting that "it's fair to ask why the authorities failed to seek formal approval of the initiative. The administration's record provides an obvious answer: When it comes to fighting terror, President Bush believes he can set and ignore rules at will."
- In a June 27 [editorial](#) titled "Treason?" the *Chicago Tribune* defended "the *Times* and other papers," stating that th *Tribune's* "overwhelming belief ... is that the greater good is served when there's a free flow of information so that people can make their own decisions about their government."
- In a June 27 [editorial](#), New York's *Newsday* stated that "the newspapers that published the story -- The New York Times, The Los Angeles Times and The

Wall Street Journal -- did the right thing." *Newsday* asserted that the Treasury Department's financial monitoring program "was conducted with no outside oversight and with the bare minimum of Congressional involvement." The editorial continued, "That's the same way Bush operated in allowing the National Security Agency to monitor overseas phone calls and e-mail, and to scour phone records in search of suspicious calling patterns. For snooping to be effective, some secrecy is required. But finding the proper, delicate balance between privacy and the need to track terrorists is too important to be left to the White House alone."

- Addressing the criticism directed at *The New York Times* for the program's revelation, in a June 27 [editorial](#), the *St. Louis Post-Dispatch* noted that "[i]n the Pentagon Papers case, the Supreme Court set the benchmark: Newspapers should be prevented from publishing only when disclosure will result in 'direct, immediate, and irreparable harm to our Nation, or its people.' The bank-records disclosures do not meet that standard. They don't even come close."
- In a June 27 [editorial](#), the *Philadelphia Daily News* started by criticizing Rep. Peter King (R-NY) for wanting "the editors and reporters of the *New York Times* strung up for treason for exposing the Bush administration's prying into the overseas bank records of Americans in hopes of finding terrorist connections." The *Daily News* then wondered why King "has not called for a similar investigation of the *Wall Street Journal*, which also broke the story last week." The *Daily News* concluded that "[w]hat King should really be calling for are investigations on how the administration used the feverish imaginings of a lunatic to build the case for the war in Iraq."
- In a June 28 [editorial](#), *The Baltimore Sun* criticized the Bush administration's attack on *The New York Times* and the "free press," claiming that "[n]ewspapers frequently have to make difficult decisions about what they print -- but those judgments must remain with them. An independent press free to report the news 'without fear or favor,' as Times publisher [Adolph Ochs](#) described his mission in 1896, may be the last bastion of democracy."
- A June 28 *Buffalo News* [editorial](#) defended *The New York Times* story and argued that "Congress should move to enact a federal shield law that would help keep government as transparent and accountable as possible. By protecting reporters from governmental strong-arming, a shield law would ultimately and fundamentally protect democracy and the public's right to know what the federal bureaucracy is doing." The *News* added that "[t]rue secrets deserve 'classified' protection. Inconvenient information does not. Does the president, for instance, really believe al-Qaida needs the *New York Times* to figure out America monitors its financial transactions? The bill would make the system more standardized and accountable. With strong bipartisan support, it should become law."
- A June 28 *Philadelphia Inquirer* [editorial](#) questioned the "searing criticism" directed at *The New York Times* by "[c]onservative commentators and other critics," who, in the *Inquirer's* words, "had a field day tossing around the word *treason*." (emphasis in the original) The editorial went on to highlight comments by King because of his "talk[] of prosecuting journalists for revealing that federal agents are poring over records of overseas bank transactions." The *Inquirer*

- countered by noting that "more Americans are 'surviving roadside bombings in Afghanistan thanks to thick armor plate and bulletproof glass windows that now encase humvees,' " while crediting "the 2004 accounts by journalists (and bloggers) for causing the stir over the humvees' being so lightly armored." The editorial added that "King is suspiciously selective in his target. The Wall Street Journal, whose editorial page espouses conservative views, was among other major papers to report the story."
- A June 28 *Pioneer Press* (St. Paul, Minnesota) [editorial](#) also weighed in on the bank-tracking program's disclosure. The *Press* highlighted comments by former Sen. Dave Durenberger (R-MN), who said: "[T]he public disclosure may not be all bad, in that the story reminds terrorists that the U.S. is looking everywhere." Continuing, Durenberger said, "Don't be afraid to let some people know what you know. ... The scary stuff to them is, somebody's actually in your bedroom."
 - A June 29 [editorial](#) in *The Oregonian* also invoked the Pentagon Papers case to argue against criticizing *The New York Times* and the other papers that revealed the bank-tracking program. It also supported the disclosure of the program, stating that "the nation is now aware of yet another sweeping and secret anti-terrorism monitoring program its government has set up with no judicial review, no authorizing legislation and precious little congressional oversight. How much of our civil liberties are Americans willing to give up? We can't debate such inroads if we don't know about them."
 - On June 29, *The Sacramento Bee* [took issue](#) with criticism of *The New York Times* from congressional Republicans and the White House, noting comments from "Roger Cressey, a former U.S. counterterrorism official," who said that "the White House is 'overreaching,' " in its claim that the disclosure of the bank-tracking program has "do[ne] great harm to ... America," according to President Bush, by "tipping off" suspected terrorists. The *Bee* noted Cressey's analysis "that the SWIFT program 'has been in the public domain before.' " The *Bee* concluded that the Bush administration's actions, stemming from its "overdeveloped passion for secrecy ... deserve to be held up to the light of day, no matter how unflattering the result may be to those now in power."
 - On June 29, *The Washington Post's* editorial board, whose news division also published a June 23 [article](#) on the SWIFT program (*New York Times*, *Los Angeles Times*, and *Wall Street Journal* articles were posted online on June 22), [concluded](#) that "[t]hose who complain about disclosures assert that the war on terrorism has changed the calculus of risk. They would prefer a media meekly obeying official demands for secrecy. But in the end ... the nation stands to benefit far more than it could lose from a press that is 'alert, aware and free.' "
 - A June 30 *Boston Globe* [editorial](#), in supporting *The New York Times*, the *Los Angeles Times*, and *The Wall Street Journal*, asserted that "[a]ccusations that the papers committed a treasonous act are so intemperate that they seem to derive more from a partisan campaign by anxious Republicans than a simple concern to protect Americans from terrorist attack." The *Globe* added: "It is the job of a free press to let the public know what secrecy-obsessed administrations are doing in the name of the American people. The institutional interests of government and

the press will inevitably clash at times, and in clashing preserve the tensile strength of an open society."

- A June 30 *Columbus Dispatch* [editorial](#) also came out in support of the program's public disclosure. The *Dispatch* asserted that "the government's monitoring of financial data and personal communications is appropriate. But beefed-up spying, as with any government program, should be subject to the checks and balances designed by the Founders to guard against abuse by any of the three branches of government." The *Dispatch* added, "The administration's penchant for secrecy hinders Congress' ability to oversee intelligence matters. ... Had the administration, before launching these operations, sought the approval of more lawmakers from both parties on the House and Senate intelligence panels, these efforts would face fewer complaints today."
- Finally, a June 30 *Pittsburgh Post-Gazette* [editorial](#) supported *The New York Times*, the *Los Angeles Times*, and the *Journal*, stating that "[g]iven that the Bush administration has shown scant respect for the law, both in domestic surveillance and in confining terror suspects at Guantanamo Bay in defiance of the Geneva Conventions, this is an important news story that should be of interest to every American who cares about how the government behaves." It further asserted that criticism of the decision to reveal the program "offends common sense."

Two conservative editorial boards have criticized *The New York Times*. In a June 30 [editorial](#), the *Journal's* editorial board questioned *The New York Times'* decision to reveal the bank-tracking program's details, [even though](#) the *Journal* had also published a [story](#) (subscription required) on the program's operations the very same day.

The Washington Times also [criticized](#) *The New York Times'* June 23 bank-tracking story, writing in a June 24 editorial, titled "[The right not to know](#)," that *The New York Times* article "is an extraordinary commandeering of public policy from elected officials and the government they administer." The editorial concluded by stating, "The editors of the New York Times and their like-minded partisans do not understand that sometimes Americans have a right not to know about a government program."

Slate

<http://www.slate.com/id/2145619/nav/tap1/>

Not so SWIFT

Why the *Times* shouldn't have published its story.

By Jacob Weisberg

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In the latest battle between the press and the White House, opinions have tended to break along predictable lines. The ACLU, most Democrats in Congress, and Frank Rich contend that the *New York Times* did the right thing in revealing government monitoring of international financial transactions through the SWIFT system. Dick Cheney, Republican House members, and a pitchfork-waving mob of talk-show hosts and

conservative bloggers think exposing the operation damaged national security without justification. Lumping the recent disclosure together with earlier revelations about the National Security Agency's domestic eavesdropping program, feverish voices on the right are calling for journalists to be prosecuted for treason.

The first thing to say about this fight is that conservative claims about the media's supposed motivations in publishing both the NSA and SWIFT stories reflect only ideology and ignorance. Editors at the *New York Times* and other major American newspapers do not pursue stories of this kind because of animus against the Bush administration or a wish to help terrorists. They struggle mightily with such decisions and often do, in the name of national security, withhold, delay, or modify what they would otherwise publish. The legal basis for prosecuting journalists who reveal classified information is tenuous, and demands to do so betray a fundamental lack of appreciation for the bedrock principle of the First Amendment.

All that said, let me depart from the liberal consensus and argue that the *New York Times*, while acting in good faith, made the wrong call by printing the SWIFT story. Editors there and at the *Los Angeles Times* and *Wall Street Journal* who also had pieces of the scoop should have waited to publish it, at least until they could be more certain that the snooping program was no longer useful.

Newspaper editors tend to be very uncomfortable making complex balancing judgments about the public interest vs. national security and usually end up falling back on the one bright line they do have, the "troop movements" test of whether anyone on our side might be killed as a result of their publishing information. But how should they make a decision in a case like this, where immediate consequences are not at issue? To run with a story with the potential to cause significant harm to the national interest, I'd argue, an editor needs one of two things: a solid claim of public interest, or a sound basis for thinking that a story won't in fact damage national security. In the case of the SWIFT story, editors at the *Times* were notably weak in both suits.

The first question editors need to ask might be framed in this way: Is there a good case that the practice or actions we want to disclose are wrong—in terms of law, procedure, or morality? With Abu Ghraib (*The New Yorker*), the CIA secret prisons in Eastern Europe (the *Washington Post*), and the NSA wiretapping story (the *Times* again), the answers were clearly yes, yes, and yes. To focus on the last example, the permissibility of warrantless government eavesdropping rested on a far-out (and I would argue specious) legal theory that now faces a challenge in federal courts. Overseers on the congressional intelligence committees were not properly notified, and whether or not the privacy concerns raised should have been decisive, they were significant.

With the SWIFT program, by contrast, claims of illegality, lack of statutory oversight, and invasion of privacy are far less compelling. It's not clear that the Treasury Department needed a subpoena to obtain the information it has been getting from SWIFT, but it submitted one anyway. Members of Congress were informed about the operation, albeit belatedly in some cases. And while some trained-seal privacy advocates are happy

to express "concern" anytime a reporter calls for a quote, there is in legal terms a diminished expectation of privacy in financial transactions that go through a quasi-public infrastructure like SWIFT. Of course, these points are all arguable, but the bottom line is that the public interest in knowing about this program wasn't that powerful.

Because the story fails to clear the public-interest hurdle easily, the issue becomes: Is the alleged harm genuine? Here, too, there is room for disagreement. Treasury officials point to terrorists caught with the help of SWIFT data, including Hambali, who was behind the Bali bombing. There is no evidence to contradict their assertion that the program continued to be useful in tracking other terrorists. Presumably, members of al Qaida have long assumed that bank transfers, like phone calls, can be traced by authorities. But not all terrorists are diabolical masterminds. Like conventional criminals, many are simply stupid and violent (and incompetent). Yet it's hard to imagine any terrorist brainless enough to continue moving money through banks internationally now that he knows for certain that *all* such transactions are transparent to the CIA.

One might contrast the *Times*' SWIFT story in this respect with disclosures about another financial spying program in Ron Suskind's new book, *The One Percent Doctrine*. As the book reveals, Israeli intelligence officials cooperating with the CIA were able to pre-empt a number of suicide bombings by tracking Western Union cash transfers beginning in 2003. But by late 2004, Palestinian terrorists had cottoned on and quit using Western Union to send money. Suskind didn't disclose anything harmful, because officials acknowledged that the program had ceased to be useful.

In fairness to the *Times*, administration officials who tried to talk editors there out of publishing seem to have emphasized a much weaker argument for withholding the SWIFT story—that disclosure would put pressure on European governments to oppose the program. It's hardly a valid national security argument to say that the public in other democratic countries might reflexively oppose something if they knew we were doing it. That's a diplomatic problem of Bush's own making, and he can't reasonably enlist the press in trying to solve it. In any case, that concern hasn't been borne out. Few in Europe seem alarmed by, or even much interested in, the SWIFT disclosures. The stronger point is simply that we shouldn't tip our hand to people trying to kill us.

To publish or not to publish a story like this is seldom an easy decision. But given its relative unimportance to most Americans and Europeans, the absence of apparent wrongdoing on the part of the government, and the potential for it to be helpful to terrorists, the *Times* might have been wise to put this one on the spike.

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John Nichols, Madison Capital Times

<http://www.madison.com/tct/opinion/column/index.php?ntid=89432&ntpid=0>

For Bush, some leaks better than others

By John Nichols

In a democracy, the first responsibility of a journalist is to get accurate information about what the government is doing to the people so that they can make appropriate decisions about what is done in their name.

That's why the founders put an unequivocal freedom of the press protection in the First Amendment to the Constitution, and it's why Thomas Jefferson famously declared, "The basis of our governments being the opinion of the people, the very first object should be to keep that right; and were it left to me to decide whether we should have a government without newspapers, or newspapers without a government, I should not hesitate a moment to prefer the latter."

Of course, there have been some limits on what information journalists share with the citizenry. It is generally agreed, for instance, that reporters ought not report in too much detail on troop movements in wartime, as the publication of such information could endanger soldiers and undermine military objectives.

So when the Washington press corps began reporting this week on leaked information about planning by U.S. commanders in Iraq to withdraw two of the 14 combat brigades stationed in that country by September of this year, it would not have been surprising if the stories had raised eyebrows among the more sensitive players in the Bush administration.

While this is hardly a classic example of "reporting on troop movements," it is an instance where the media are getting into quite a bit of detail about where U.S. troops will be positioned in the none-too-distant future. As an example, television networks are showing maps of the regions of Iraq from which U.S. troops might exit in relatively short order.

So what has been the reaction of a White House that is known to be on edge about leaks regarding the deployment of U.S. troops in coming months?

President Bush and White House Press Secretary Tony Snow have both ruminated on the rumors in some detail. Each has suggested that no decision has yet been made, and they have even detailed the standards that are being used to come to decisions about withdrawal.

The conversations have been easy going, and White House reporters have felt no presidential fury. Contrast that reaction to the response by the president, his aides and allies to reports in the New York Times, the Los Angeles Times and the Wall Street Journal that the president has authorized federal agencies to monitor the banking transactions of private citizens.

Ostensibly, the monitoring is intended to track transfers of money by supposed terrorists. But the program, like many of the administration's other moves to monitor the conversations and business dealings of private individuals, has been implemented in secret, without the subpoenas that are traditionally required for such reviews, and in a manner designed to avoid the sort of independent governmental oversight that is supposed to prevent abuse.

Now, it would be ridiculous to think that Osama bin Laden or anyone else associated with al-Qaida would be naive enough to think that they could transfer large amounts of money through regular banking channels without being found out. So the revelation of the monitoring could hardly be called a threat to the "war on terror" at least, not by anyone who knows anything about dealing with terrorist networks.

Yet, President Bush went ballistic about reporting on the monitoring, telling White House reporters, "The disclosure of this program is disgraceful. We're at war with a bunch of people who want to hurt the United States of America. And for people to leak that program and for a newspaper to publish it does great harm to the United States of America."

Vice President Cheney was even blunter, saying, "Some of the press, particularly the New York Times, have made the job of defending against further terrorist attacks more difficult by insisting on publishing detailed information about vital national security programs.

Bush allies in Congress have even called for the prosecution of the New York Times for revealing to Americans the extent to which they are being spied upon.

So why is the Bush administration so freaked out about a leak regarding a spying program that could not possibly have come as news to any terrorists but that certainly might interest average Americans? And why isn't the president concerned about leaks regarding specific redeployments of troops in the near future?

There's no mystery.

The leak about spying on bank records will feed concerns about the extent that this administration has engaged in spying on citizens. That could be politically damaging.

On the other hand, the leak about planning for troop deployments coming at a time when the majority of Americans say they want to see a plan for getting the U.S. out of Iraq eases the political pressure on the president and his Republican allies.

What's the bottom line? The cynical Bush White House has always seen the "war on terror" as a political tool. The president and his allies heeding the advice of White House political czar Karl Rove regularly tailor their responses to new developments to benefit their domestic political fortunes while undermining the prospects of their political foes.

Leaks about plans for troop redeployment are fine with the president because they could help him and his congressional allies politically.

Leaks about the administration spying on citizens, on the other hand, are "disgraceful" because they could cause the president and his Republicans acolytes political harm.